

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LYTARIAN LADON WEAVER,

Defendant-Appellant.

UNPUBLISHED

August 20, 2002

No. 234252

Muskegon Circuit Court

LC No. 93-035421-FH

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his consecutive sentences of four and one-half to twenty years and two to twenty years in prison imposed on his plea-based conviction of probation violation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1993 defendant pleaded guilty of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and conspiracy to deliver less than fifty grams of cocaine, MCL 750.157a, and was sentenced to lifetime probation. In 1997 and 1998 defendant pleaded guilty of violating his probation by using marijuana. On both occasions he was continued on lifetime probation. In 2000 defendant pleaded guilty of violating his probation by using marijuana and failing to attend a court-ordered treatment program. The trial court sentenced defendant to consecutive prison terms of four and one-half to twenty years for the conviction of delivery of less than fifty grams of cocaine, and two to twenty years for the conviction of conspiracy to deliver less than fifty grams of cocaine. Defendant received credit for 381 days served in jail.

Defendant argues that when considered together, his minimum terms are disproportionate to his circumstances and to those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree and affirm defendant's sentences. In determining proportionality, this Court is not required to consider the cumulative length of consecutive sentences. Rather, the proper inquiry is whether each sentence is proportionate. *People v Miles*, 454 Mich 90, 95; 559 NW2d 299 (1997). The judicial sentencing guidelines do not apply to probation violators and are not to be considered when fashioning a sentence for probation violation. *People v Williams*, 223 Mich App 409, 412-413; 566 NW2d 649 (1997).

Defendant's assertion that the statutory sentencing guidelines should be considered to determine the proportionality of his sentences is without merit. The statutory sentencing

guidelines apply only to offenses committed on or after January 1, 1999. MCL 769.34(1). The legislature did not intend that the statutory guidelines be applied retroactively to offenses committed before January 1, 1999. *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995).

Defendant violated his probation on two previous occasions but was not given more severe punishment, and in addition committed two misdemeanor offenses while on probation. Defendant's behavior indicated an unwillingness to conform his actions to the requirements of the law. His minimum terms of imprisonment do not constitute an abuse of discretion under the circumstances.

Affirmed.

/s/ Helene N. White

/s/ Janet T. Neff

/s/ Kathleen Jansen